



April 6, 2007

ENGROSSED SENATE BILL No. 154

DIGEST OF SB 154 (Updated April 4, 2007 12:30 pm - DI 69)

Citations Affected: IC 4-4; IC 4-22; IC 4-23; IC 13-14; IC 13-20; IC 13-26; noncode.

Synopsis: Environmental matters. Allows an environmental rulemaking board to adopt an emergency rule to comply with a date provided by federal law. Establishes a special environmental rulemaking process for adoption or incorporation by reference of federal provisions or for technical or clarifying amendments. Requires the environmental quality service council to study environmental rulemaking and recycling issues. Changes the name of the Indiana recycling and energy development board to the Indiana recycling market development board, reduces membership from thirteen to nine, and adjusts the subject areas that must be represented by members. Provides for administration of the board by the division of pollution prevention of the department of environmental management instead of the lieutenant governor. Terminates the terms of the members of the former board, and directs the governor to appoint the new board members before July 1, 2007. Deletes references to board activities concerning energy resources and substitutes activities concerning recycling resources and uses of solid waste. Adjusts the permitted uses
(Continued next page)

Effective: Upon passage; July 1, 2007.

Gard, Tallian

(HOUSE SPONSORS — DVORAK, WOLKINS)

January 8, 2007, read first time and referred to Committee on Energy and Environmental Affairs.

January 18, 2007, amended, reported favorably — Do Pass.

January 22, 2007, read second time, ordered engrossed. Engrossed.

January 29, 2007, read third time, passed. Yeas 47, nays 2.

HOUSE ACTION

March 12, 2007, read first time and referred to Committee on Environmental Affairs.

April 5, 2007, amended, reported — Do Pass.

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of the waste tire management fund, eliminating use of the fund by the lieutenant governor. Requires a regional sewage district that seeks to require connection to the district's sewer system of property that is: (1) located outside the district's territory; and (2) within 300 feet of the system; to provide the property owner with a certification from the local health department that the connection is necessary to protect the public's health. Prohibits a regional sewage district from requiring the property owner to connect the property to the district's sewer system if the property is already connected to a sewer system that: (1) has received all necessary state permits and approvals; and (2) has been determined to be functioning satisfactorily. Sets forth the procedures to be used by a district's board to add territory to a district. Provides that if a regional sewage district changes or readjusts the district's rates and charges, the board shall mail a notice of the new rates and charges to each user affected by the change or readjustment. Provides that if a sewage district adopts an ordinance increasing the rates and charges by more than 5% per year, the required notice: (1) shall be mailed to each affected user not later than seven days after the ordinance is adopted; and (2) must include a statement of a freeholder's right to file a petition objecting to the rates and charges.

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April 6, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 154

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-4-2.4-2, AS ADDED BY P.L.144-2006,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2007]: Sec. 2. The office of the lieutenant governor may adopt
4 rules under IC 4-22-2 to carry out the duties, purposes, and functions
5 of the office of the lieutenant governor relating to:

- 6 (1) energy policy under section 1 of this chapter; **and**
7 (2) the administration of the center for coal technology research
8 under IC 4-4-30-5.5. **and**
9 ~~(3) the Indiana recycling and energy development board under~~
10 ~~IC 4-23-5.5-6.5.~~

11 SECTION 2. IC 4-22-2-37.1, AS AMENDED BY P.L.47-2006,
12 SECTION 2, AS AMENDED BY P.L.91-2006, SECTION 2, AND AS
13 AMENDED BY P.L.123-2006, SECTION 12, IS CORRECTED AND
14 AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
15 PASSAGE]: Sec. 37.1. (a) This section applies to a rulemaking action
16 resulting in any of the following rules:

- 17 (1) An order adopted by the commissioner of the Indiana

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department of transportation under IC 9-20-1-3(d) or IC 9-21-4-7(a) and designated by the commissioner as an emergency rule.

(2) An action taken by the director of the department of natural resources under IC 14-22-2-6(d) or IC 14-22-6-13.

(3) An emergency temporary standard adopted by the occupational safety standards commission under IC 22-8-1.1-16.1.

(4) An emergency rule adopted by the solid waste management board under IC 13-22-2-3 and classifying a waste as hazardous.

(5) A rule, other than a rule described in subdivision (6), adopted by the department of financial institutions under IC 24-4.5-6-107 and declared necessary to meet an emergency.

(6) A rule required under IC 24-4.5-1-106 that is adopted by the department of financial institutions and declared necessary to meet an emergency under IC 24-4.5-6-107.

(7) A rule adopted by the Indiana utility regulatory commission to address an emergency under IC 8-1-2-113.

(8) An emergency rule adopted by the state lottery commission under IC 4-30-3-9.

(9) A rule adopted under IC 16-19-3-5 that the executive board of the state department of health declares is necessary to meet an emergency.

(10) An emergency rule adopted by the Indiana finance authority under IC 8-21-12.

(11) An emergency rule adopted by the insurance commissioner under IC 27-1-23-7.

(12) An emergency rule adopted by the Indiana horse racing commission under IC 4-31-3-9.

(13) An emergency rule adopted by the air pollution control board, the solid waste management board, or the water pollution control board under IC 13-15-4-10(4) or to comply with a deadline required by **or other date provided by** federal law, provided:

(A) the variance procedures are included in the rules; and

(B) permits or licenses granted during the period the emergency rule is in effect are reviewed after the emergency rule expires.

(14) An emergency rule adopted by the Indiana election commission under IC 3-6-4.1-14.

(15) An emergency rule adopted by the department of natural resources under IC 14-10-2-5.

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(16) An emergency rule adopted by the Indiana gaming commission under *IC 4-32.2-3-3(b)*, *IC 4-33-4-2*, *IC 4-33-4-3*, or *IC 4-33-4-14*.

(17) An emergency rule adopted by the alcohol and tobacco commission under *IC 7.1-3-17.5*, *IC 7.1-3-17.7*, or *IC 7.1-3-20-24.4*.

(18) An emergency rule adopted by the department of financial institutions under *IC 28-15-11*.

(19) An emergency rule adopted by the office of the secretary of family and social services under *IC 12-8-1-12*.

(20) An emergency rule adopted by the office of the children's health insurance program under *IC 12-17.6-2-11*.

(21) An emergency rule adopted by the office of Medicaid policy and planning under *IC 12-15-41-15*.

(22) An emergency rule adopted by the Indiana state board of animal health under *IC 15-2.1-18-21*.

(23) An emergency rule adopted by the board of directors of the Indiana education savings authority under *IC 21-9-4-7*.

(24) An emergency rule adopted by the Indiana board of tax review under *IC 6-1.1-4-34* **(repealed)**.

(25) An emergency rule adopted by the department of local government finance under *IC 6-1.1-4-33* **(repealed)**.

(26) An emergency rule adopted by the boiler and pressure vessel rules board under *IC 22-13-2-8(c)*.

(27) An emergency rule adopted by the Indiana board of tax review under *IC 6-1.1-4-37(l)* **(repealed)** or an emergency rule adopted by the department of local government finance under *IC 6-1.1-4-36(j)* **(repealed)** or *IC 6-1.1-22.5-20*.

(28) An emergency rule adopted by the board of the Indiana economic development corporation under *IC 5-28-5-8*.

(29) A rule adopted by the department of financial institutions under *IC 34-55-10-2.5*.

(30) *A rule adopted by the Indiana finance authority:*

(A) under IC 8-15.5-7 approving user fees (as defined in IC 8-15.5-2-10) provided for in a public-private agreement under IC 8-15.5;

(B) under IC 8-15-2-17.2(a)(10):

(i) establishing enforcement procedures; and

(ii) making assessments for failure to pay required tolls;

(C) under IC 8-15-2-14(a)(3) authorizing the use of and establishing procedures for the implementation of the collection of user fees by electronic or other nonmanual

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means; or

(D) to make other changes to existing rules related to a toll road project to accommodate the provisions of a public-private agreement under IC 8-15.5.

(b) The following do not apply to rules described in subsection (a):

(1) Sections 24 through 36 of this chapter.

(2) IC 13-14-9.

(c) After a rule described in subsection (a) has been adopted by the agency, the agency shall submit the rule to the publisher for the assignment of a document control number. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the ~~number of copies~~ format of the rule and other documents to be submitted under this subsection.

(d) After the document control number has been assigned, the agency shall submit the rule to the ~~secretary of state~~ publisher for filing. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The ~~secretary of state~~ publisher shall determine the ~~number of copies~~ format of the rule and other documents to be submitted under this subsection.

(e) Subject to section 39 of this chapter, the ~~secretary of state~~ publisher shall:

(1) accept the rule for filing; and

(2) ~~file stamp and indicate electronically record~~ the date and time that the rule is accepted. ~~on every duplicate original copy submitted.~~

(f) A rule described in subsection (a) takes effect on the latest of the following dates:

(1) The effective date of the statute delegating authority to the agency to adopt the rule.

(2) The date and time that the rule is accepted for filing under subsection (e).

(3) The effective date stated by the adopting agency in the rule.

(4) The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the rule.

(g) Subject to subsection (h), IC 14-10-2-5, IC 14-22-2-6, IC 22-8-1.1-16.1, and IC 22-13-2-8(c), and except as provided in subsections (j), ~~and~~ (k), and (l), a rule adopted under this section expires not later than ninety (90) days after the rule is accepted for filing under subsection (e). Except for a rule adopted under subsection (a)(13), (a)(24), (a)(25), or (a)(27), the rule may be extended by

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adopting another rule under this section, but only for one (1) extension period. The extension period for a rule adopted under subsection (a)(28) may not exceed the period for which the original rule was in effect. A rule adopted under subsection (a)(13) may be extended for two (2) extension periods. Subject to subsection (j), a rule adopted under subsection (a)(24), (a)(25), or (a)(27) may be extended for an unlimited number of extension periods. Except for a rule adopted under subsection (a)(13), for a rule adopted under this section to be effective after one (1) extension period, the rule must be adopted under:

(1) sections 24 through 36 of this chapter; or

(2) IC 13-14-9;

as applicable.

(h) A rule described in subsection (a)(6), (a)(8), (a)(12), or (a)(29) expires on the earlier of the following dates:

(1) The expiration date stated by the adopting agency in the rule.

(2) The date that the rule is amended or repealed by a later rule adopted under sections 24 through 36 of this chapter or this section.

(i) This section may not be used to readopt a rule under IC 4-22-2.5.

(j) A rule described in subsection (a)(24) or (a)(25) expires not later than January 1, 2006.

(k) A rule described in subsection (a)(28) expires on the expiration date stated by the board of the Indiana economic development corporation in the rule.

(l) A rule described in subsection (a)(30) expires on the expiration date stated by the Indiana finance authority in the rule.

SECTION 3. IC 4-23-5.5-1, AS AMENDED BY P.L.1-2006, SECTION 78, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. As used in this chapter:

(1) "board" ~~means~~ **refers to** the Indiana recycling ~~and energy~~ **market** development board created by this chapter; **and**

(2) "division" **refers to the division of pollution prevention established by IC 13-27-2-1.**

SECTION 4. IC 4-23-5.5-2, AS AMENDED BY P.L.1-2006, SECTION 79, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) The Indiana recycling ~~and energy~~ **market** development board is created and constitutes a public instrumentality of the state. The exercise by the board of the powers conferred by this chapter is an essential governmental function.

(b) The board consists of ~~thirteen (13)~~ **nine (9)** members, one (1) of whom shall be the lieutenant governor or the lieutenant governor's designee and ~~twelve (12)~~ **eight (8)** of whom shall be appointed by the

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governor for four (4) year terms. The governor's appointees shall be chosen from among representatives of:

- (1) the coal industry;
- ~~(2) other regulated and nonregulated energy related industries;~~
- ~~(3)~~ **(2)** Indiana universities and colleges with expertise in:
 - (A) recycling research and development; or
 - (B) energy research and development;
- ~~(4) agriculture;~~
- ~~(5)~~ **(3)** labor;
- ~~(6)~~ **(4)** industrial and commercial consumers **of recycled feedstock;**
- ~~(7)~~ **(5)** environmental groups; and
- ~~(8)~~ **(6)** private citizens with a special interest in
 - ~~(A) recycling, or~~
 - ~~(B) energy resources development.~~

No more than ~~six (6)~~ **four (4)** appointive members shall be of the same political party.

(c) A vacancy in the office of an appointive member, other than by expiration, shall be filled in like manner as the original appointment for the remainder of the term of that retiring member. Appointed members may be removed by the governor for cause.

(d) The board shall have seven (7) ex officio advisory members as follows:

- (1) The governor.
- (2) The director of the department of natural resources.
- (3) The commissioner of the department of environmental management.
- (4) Two (2) members from the house of representatives of opposite political parties appointed by the speaker of the house of representatives for two (2) year terms.
- (5) Two (2) members from the senate of opposite political parties appointed by the president pro tempore of the senate for two (2) year terms.

(e) The ~~office of the lieutenant governor~~ **division** shall serve as the staff of the board.

SECTION 5. IC 4-23-5.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) The governor shall appoint one (1) of the appointed members as chairman. ~~Seven (7)~~ **Five (5)** members of the board shall constitute a quorum and the affirmative vote of a majority of the membership shall be necessary for any action taken by the board. A vacancy in the membership of the board does not impair the right of the quorum to act.



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(b) All the members of the board shall be reimbursed for their actual expenses incurred in the performance of their duties. The appointed members may also receive a per diem allowance as determined by the budget agency for attendance of board meetings and activities. All reimbursement for expenses shall be as provided by law.

SECTION 6. IC 4-23-5.5-4, AS AMENDED BY P.L.1-2006, SECTION 80, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. **A representative appointed by the division, in consultation with the** lieutenant governor or the lieutenant governor's designee, shall be the chief administrative officer for the board and shall direct and supervise the administrative affairs and technical activities of the board in accordance with rules, regulations, and policies established by the board. ~~The lieutenant governor or the lieutenant governor's designee~~ **division** may appoint the employees as the board may require and the agents or consultants as may be necessary for implementing this chapter. ~~The lieutenant governor or the lieutenant governor's designee~~ **division** shall prepare an annual administrative budget for review by the budget agency and the budget committee.

SECTION 7. IC 4-23-5.5-6, AS AMENDED BY P.L.1-2006, SECTION 81, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. (a) The board shall do the following:

(1) Adopt procedures for the regulation of its affairs and the conduct of its business.

(2) Meet at the offices of the ~~lieutenant governor~~ **division** on call of:

(A) the lieutenant governor or the lieutenant governor's designee; **or**

(B) the commissioner of the department of environmental management or the commissioner's designee;

at least once each calendar quarter. The meetings shall be upon ten (10) days written notification, shall be open to the public, and shall have official minutes recorded for public scrutiny.

(3) Report annually in an electronic format under IC 5-14-6 to the legislative council the projects in which it has participated and is currently participating with a complete list of expenditures for those projects.

(4) Annually prepare an administrative budget for review by the budget agency and the budget committee.

(5) Keep proper records of accounts and make an annual report of its condition to the state board of accounts.

~~(b) The board may request that the lieutenant governor conduct~~

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assessments of the opportunities and constraints presented by all sources of energy. The board shall encourage the balanced use of all sources of energy with primary emphasis on:

- (1) the utilization of Indiana's high sulphur coal; and
- (2) the utilization of Indiana's agricultural and forest resources and products for the production of alcohol fuel.

However, the board shall seek to avoid possible undesirable consequences of total reliance on a single source of energy.

(c) (b) The board shall consider projects involving the creation of the following:

- (1) Markets for products made from recycled materials.
- (2) New products made from recycled materials.

(d) (c) The board may promote, fund, and encourage programs facilitating the development and effective use of all sources of energy **implementation of waste reduction, reuse, and recycling** in Indiana.

SECTION 8. IC 4-23-5.5-6.5, AS ADDED BY P.L.144-2006, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6.5. The office of the lieutenant governor **department of environmental management** may adopt rules under IC 4-22-2 to carry out the duties, purposes, and functions of this chapter.

SECTION 9. IC 4-23-5.5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. The board, upon approval by the governor and the budget agency, may make the following expenditures:

- (1) Matching grants to federal, state, and local governmental agencies for research and development of: **energy**
 - (A) **recycling** resources projects; and
 - (B) recycling market development projects; in Indiana.
- (2) Matching grants to individuals, corporations, limited liability companies, partnerships, educational institutions, and other private sector groups for **energy recycling** resources and recycling market research and development.
- (3) Direct grants, loans, or loan guarantees to those individuals and organizations specified in subdivision (1) or (2) of this section.
- (4) Contractual services for **energy recycling** resources and recycling market research and development programs.
- (5) ~~Purchase or lease land for energy resources and recycling market research and development projects.~~
- (6) (5) Other projects and expenses consistent with this chapter.



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SECTION 10. IC 4-23-5.5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. The board may:

(1) on behalf of the state, receive and accept grants, gifts, and contributions from public agencies, including the federal government, and from private agencies and private sources, including the Indiana business modernization and technology corporation, for the purpose of researching and developing ~~energy~~ **recycling** resources within the state, and may administer such, including contracting with other public and private organizations, to carry out the purposes for which such grants, gifts, and contributions were made;

(2) establish application forms and procedures for programs consistent with this chapter;

(3) accept applications from private and public sources for funding of programs consistent with this chapter;

(4) provide funding for studies, research projects, and other activities required to assess the nature and extent of recycling markets in Indiana and the nature and extent of ~~energy~~ **recycling** resources to meet the needs of the state; ~~including but not limited to coal and other fossil fuels, alcohol fuels produced from agricultural and forest products and resources, renewable, and other energy resources;~~

(5) deposit funds not currently needed to meet the obligations of the board with the treasurer of state to the credit of the fund, or invest in obligations as provided by IC 5-13-10.5; and

(6) participate in or sponsor programs, conferences, or seminars aimed at assisting the state in promoting recycling market development. ~~and the effective use of all sources of energy in Indiana.~~

SECTION 11. IC 13-14-9-1, AS AMENDED BY P.L.100-2006, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) Except as provided in ~~section~~ **sections 8 and 14** of this chapter, this chapter applies to the following:

(1) A board.

(2) The underground storage tank financial assurance board established by IC 13-23-11-1.

(b) In addition to the requirements of IC 4-22-2 and IC 13-14-8, a board may not adopt a rule except in accordance with this chapter.

SECTION 12. IC 13-14-9-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) Unless a board determines ~~under section 5(c)(2) of this chapter~~ that a proposed rule should be subject to additional comments **or makes a**

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determination described in subsection (f), sections 3 and 4 through 14 of this chapter do not apply to a rulemaking action if the commissioner determines that:

(1) the proposed rule constitutes:

(A) an adoption or incorporation by reference of a federal law, regulation, or rule that:

(i) is or will be applicable to Indiana; and

(ii) contains no amendments that have a substantive effect on the scope or intended application of the federal law or rule;

(B) a technical amendment with no substantive effect on an existing Indiana rule; or

(C) a substantive amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule; and

(2) the proposed rule is of such nature and scope that there is no reasonably anticipated benefit to the environment or the persons referred to in section 7(a)(2) of this chapter from the following:

(A) Exposing the proposed rule to diverse public comment under section 3 or 4 of this chapter.

(B) Affording interested or affected parties the opportunity to be heard under section 3 or 4 of this chapter.

(C) Affording interested or affected parties the opportunity to develop evidence in the record collected under sections 3 and 4 of this chapter.

(b) If the commissioner makes a determination under subsection (a), the commissioner shall prepare written findings under this section. The full text of the commissioner's written findings shall be

~~(1) published in the Indiana Register before the public meeting held under section 5(a)(1) of this chapter; and~~

~~(2) included in:~~

(1) the notice of adoption of the proposed rule; and

(2) the written materials to be considered by the board at the public meeting hearing held under this section. ~~5(a)(1) of this chapter.~~

(c) The notice of adoption of a proposed rule under this section must:

(1) be published in the Indiana Register; and

(2) include the following:

(A) Draft rule language that includes the language described in subsection (a)(1).

(B) A written comment period of at least thirty (30) days.

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- 1 **(C) A notice of public hearing before the appropriate**
 2 **board.**
- 3 **(d) The department shall include the following in the written**
 4 **materials to be considered by the board at the public hearing**
 5 **referred to in subsection (c):**
- 6 **(1) The full text of the proposed rule as most recently**
 7 **prepared by the department.**
- 8 **(2) Written responses of the department to written comments**
 9 **received during the comment period referred to in subsection**
 10 **(c).**
- 11 **(3) The commissioner's findings under subsection (b).**
- 12 **(e) At the public hearing referred to in subsection (c), the board**
 13 **may:**
- 14 **(1) adopt the proposed rule;**
 15 **(2) reject the proposed rule;**
 16 **(3) determine that additional public comment is necessary; or**
 17 **(4) determine to reconsider the proposed rule at a subsequent**
 18 **board meeting.**
- 19 **(f) If the board determines under subsection (e) that additional**
 20 **public comment is necessary, the department shall publish a second**
 21 **notice in accordance with section 4 of this chapter and complete the**
 22 **rulemaking in accordance with this chapter.**
- 23 SECTION 13. IC 13-14-9-12 IS AMENDED TO READ AS
 24 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. The board may
 25 reject a proposed rule under section 9(4) of this chapter if one (1) of the
 26 following conditions exists:
- 27 (1) The following occurs or has occurred:
- 28 (A) under section 8 of this chapter, sections 3 and 4 of this
 29 chapter did not apply to the proposed rule; and
- 30 (B) either:
- 31 (i) the board determines that necessary amendments to the
 32 proposed rule will affect persons that reasonably require an
 33 opportunity to comment under section 4 of this chapter,
 34 considering the criteria set forth in section ~~8(2)~~ **8(a)(2)** of
 35 this chapter; or
- 36 (ii) the board determines that due to the fundamental or
 37 inherent structure or content of the proposed rule, the only
 38 reasonably anticipated method of developing a rule
 39 acceptable to the board is to require the department to
 40 redraft the rule and to obtain the public comments under
 41 section 4 of this chapter. ~~or~~
- 42 (2) The following occurs or has occurred:

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(A) the proposed rule was subject to sections 3 and 4 of this chapter; and

(B) either:

(i) the board makes a determination set forth in subdivision (1)(B)(i) or (1)(B)(ii); or

(ii) the board determines that, due to a procedural or other defect in the implementation of the requirements under sections 3 and 4 of this chapter, an interested or affected party will be unfairly and substantially prejudiced if the public comment period under section 4 of this chapter is not again afforded and that no reasonable alternative method to obtain public comments is available to the interested or affected party other than the public comment period under section 4 of this chapter.

SECTION 14. IC 13-20-13-8, AS AMENDED BY P.L.1-2006, SECTION 202, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. (a) Except as provided in subsection (d)(2), (d)(3), (d)(6), and (d)(7), the waste tire management fund is established for the following purposes:

(1) **The department may use not more than** thirty-five percent (35%) of the money deposited in the fund each year ~~shall be used to assist the department for:~~

(A) ~~in the removal and disposal of waste tires from sites where the waste tires have been disposed of improperly; and~~

(B) ~~in operating the waste tire education program under section 15 of this chapter. and~~

~~(C) to pay the expenses of administering the programs described in clause (B).~~

(2) ~~Sixty-five percent (65%) of~~ **The department may use the remaining** money deposited in the fund each year ~~shall be used to: assist the lieutenant governor:~~

(A) ~~in providing~~ **provide** grants and loans **under section 9(b) of this chapter to persons entities** involved in waste tire management activities; ~~under section 9 of this chapter; and~~

(B) ~~to~~ pay the expenses of administering the programs described in:

(i) subdivision (1)(B); and

(ii) clause (A).

(b) The expenses of administering the fund shall be paid from money in the fund.

(c) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

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(d) Sources of money for the fund are the following:

(1) Fees paid under section 4(a)(6) of this chapter and IC 13-20-14-5(e).

(2) Fees collected under section 7 of this chapter. All money deposited in the fund under this subdivision may be used by the department for waste reduction, recycling, removal, or remediation projects.

(3) Costs and damages recovered from a person **or other entity** under section 14 of this chapter or IC 13-20-14-8. All money deposited in the fund under this subdivision may be used by the department for removal and remediation projects.

(4) Fees established by the general assembly for the purposes of this chapter.

(5) Appropriations made by the general assembly.

(6) Gifts and donations intended for deposit in the fund. A gift or donation deposited in the fund under this subdivision may be specified to be entirely for the use of the department. ~~or the lieutenant governor.~~

(7) Civil penalties collected under IC 13-30-4 for violations of:

(A) this chapter;

(B) IC 13-20-14; and

(C) rules adopted under section 11 of this chapter and IC 13-20-14-6.

All money deposited in the fund under this subdivision may be used by the department for ~~waste tire removal and remediation~~ **eligible** projects.

SECTION 15. IC 13-20-13-9, AS AMENDED BY P.L.1-2006, SECTION 203, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. (a) The department may use money in the fund to assist the department in:

(1) removing waste tires from sites where waste tires have been disposed of improperly;

(2) properly managing waste tires;

(3) performing surveillance and enforcement activities used to implement proper waste tire management; and

(4) conducting the waste tire education program under section 15 of this chapter.

(b) The ~~lieutenant governor~~ **department** may use money in the fund to provide grants and loans to ~~persons~~ **entities** to establish and operate programs involving the following:

(1) Recycling or reuse of waste tires.

(2) Using waste tires as a source of fuel.

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(3) Developing markets for waste tires and products containing recycled or reused waste tires.

(c) The ~~lieutenant governor~~ **department** may adopt rules under IC 4-22-2 necessary to implement this section.

SECTION 16. IC 13-26-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. A district may do the following:

(1) Sue or be sued.

(2) Make contracts in the exercise of the rights, powers, and duties conferred upon the district.

(3) Adopt and alter a seal and use the seal by causing the seal to be impressed, affixed, reproduced, or otherwise used. However, the failure to affix a seal does not affect the validity of an instrument.

(4) Adopt, amend, and repeal the following:

(A) Bylaws for the administration of the district's affairs.

(B) Rules and regulations for the following:

(i) The control of the administration and operation of the district's service and facilities.

(ii) The exercise of all of the district's rights of ownership.

(5) Construct, acquire, lease, operate, or manage works and obtain rights, easements, licenses, money, contracts, accounts, liens, books, records, maps, or other property, whether real, personal, or mixed, of a person or an eligible entity.

(6) Assume in whole or in part any liability or obligation of:

(A) a person;

(B) a nonprofit water, sewage, or solid waste project system; or

(C) an eligible entity;

including a pledge of part or all of the net revenues of a works to the debt service on outstanding bonds of an entity in whole or in part in the district and including a right on the part of the district to indemnify and protect a contracting party from loss or liability by reason of the failure of the district to perform an agreement assumed by the district or to act or discharge an obligation.

(7) Fix, alter, charge, and collect reasonable rates and other charges in the area served by the district's facilities to every person whose premises are, whether directly or indirectly, supplied with water or provided with sewage or solid waste services by the facilities for the purpose of providing for the following:

(A) The payment of the expenses of the district.

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- 1 (B) The construction, acquisition, improvement, extension,
 2 repair, maintenance, and operation of the district's facilities
 3 and properties.
 4 (C) The payment of principal or interest on the district's
 5 obligations.
 6 (D) To fulfill the terms of agreements made with:
 7 (i) the purchasers or holders of any obligations; or
 8 (ii) a person or an eligible entity.
 9 (8) Except as provided in section 2.5 of this chapter, require
 10 connection to the district's sewer system of property producing
 11 sewage or similar waste, and require the discontinuance of use of
 12 privies, cesspools, septic tanks, and similar structures if:
 13 (A) there is an available sanitary sewer within three hundred
 14 (300) feet of the property line; ~~and~~
 15 (B) the district has given written notice by certified mail to the
 16 property owner at the address of the property at least ninety
 17 (90) days before a date for connection to be stated in the
 18 notice; ~~and~~
 19 **(C) if the property is located outside the district's territory,**
 20 **the district has:**
 21 **(i) obtained; and**
 22 **(ii) provided to the property owner;**
 23 **a certification from the local health department that the**
 24 **connection is necessary to protect the public's health. The**
 25 **district shall provide the property owner the certification**
 26 **required by this clause along with the notice required by**
 27 **clause (B).**
 28 **However, a district may not require the owner of a property**
 29 **described in this subdivision to connect to the district's sewer**
 30 **system if the property is already connected to a sewer system**
 31 **that has received all necessary permits from and approvals by**
 32 **the state, or any agency of the state, and has been determined**
 33 **to be functioning satisfactorily.**
 34 (9) Provide by ordinance for reasonable penalties for failure to
 35 connect and also apply to the circuit or superior court of the
 36 county in which the property is located for an order to force
 37 connection, with the cost of the action, including reasonable
 38 attorney's fees of the district, to be assessed by the court against
 39 the property owner in the action.
 40 (10) Refuse the services of the district's facilities if the rates or
 41 other charges are not paid by the user.
 42 (11) Control and supervise all property, works, easements,

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licenses, money, contracts, accounts, liens, books, records, maps, or other property rights and interests conveyed, delivered, transferred, or assigned to the district.

(12) Construct, acquire by purchase or otherwise, operate, lease, preserve, and maintain works considered necessary to accomplish the purposes of the district's establishment within or outside the district and enter into contracts for the operation of works owned, leased, or held by another entity, whether public or private.

(13) Hold, encumber, control, acquire by donation, purchase, or condemnation, construct, own, lease as lessee or lessor, use, and sell interests in real and personal property or franchises within or outside the district for:

(A) the location or protection of works;

(B) the relocation of buildings, structures, and improvements situated on land required by the district or for any other necessary purpose; or

(C) obtaining or storing material to be used in constructing and maintaining the works.

(14) Upon consent of two-thirds (2/3) of the members of the board, merge or combine with another district into a single district on terms so that the surviving district:

(A) is possessed of all rights, franchises, and authority of the constituent districts; and

(B) is subject to all the liabilities, obligations, and duties of each of the constituent districts, with all rights of creditors of the constituent districts being preserved unimpaired.

(15) Provide by agreement with another eligible entity for the joint construction of works the district is authorized to construct if the construction is for the district's own benefit and that of the other entity. For this purpose the cooperating entities may jointly appropriate land either within or outside their respective borders if all subsequent proceedings, actions, powers, liabilities, rights, and duties are those set forth by statute.

(16) Enter into contracts with a person, an eligible entity, the state, or the United States to provide services to the contracting party for any of the following:

(A) The distribution or purification of water.

(B) The collection or treatment of sanitary sewage.

(C) The collection, disposal, or recovery of solid waste.

(17) Make provision for, contract for, or sell the district's byproducts or waste.

(18) Exercise the power of eminent domain.

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(19) Remove or change the location of a fence, building, railroad, canal, or other structure or improvement located within or outside the district. If:

(A) it is not feasible or economical to move the building, structure, or improvement situated in or upon land acquired; and

(B) the cost is determined by the board to be less than that of purchase or condemnation;

the district may acquire land and construct, acquire, or install buildings, structures, or improvements similar in purpose to be exchanged for the buildings, structures, or improvements under contracts entered into between the owner and the district.

(20) Employ consulting engineers, superintendents, managers, and other engineering, construction, and accounting experts, attorneys, bond counsel, employees, and agents that are necessary for the accomplishment of the district's purpose and fix their compensation.

(21) Procure insurance against loss to the district by reason of damages to the district's properties, works, or improvements resulting from fire, theft, accident, or other casualty or because of the liability of the district for damages to persons or property occurring in the operations of the district's works and improvements or the conduct of the district's activities.

(22) Exercise the powers of the district without obtaining the consent of other eligible entities. However, the district shall:

(A) restore or repair all public or private property damaged in carrying out the powers of the district and place the property in the property's original condition as nearly as practicable; or

(B) pay adequate compensation for the property.

(23) Dispose of, by public or private sale or lease, real or personal property determined by the board to be no longer necessary or needed for the operation or purposes of the district.

SECTION 17. IC 13-26-8-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 4. (a) This section applies to the addition of territory to a district other than at the request of an eligible entity described in section 1 of this chapter.**

(b) To add territory to a district already established, the board must do the following:

(1) Adopt an ordinance establishing the boundaries of the additional territory to be included in the district.

(2) Obtain either of the following:

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(A) The signed consent of more than fifty percent (50%) of the freeholders within the territory proposed to be added to the district.

(B) A certification from the local health department that the addition of the territory to the district is needed to protect the public's health.

(3) Submit to the department a petition that includes the following:

(A) A description of the territory proposed to be added to the district.

(B) The signed consent or the certification obtained under subdivision (2).

(C) A certification that the board has mailed, either separately or along with a periodic billing statement, written notice of:

(i) the proposed addition to the district;

(ii) any potential effect that the proposed addition will have on the rates and charges for the use of and services provided by the district's works; and

(iii) a statement of a freeholder's rights under section 15 of this chapter, if the proposed addition of territory will potentially increase the rates and charges by the amount specified in section 15(c) of this chapter;

to each user of the works whose rates and charges will be potentially affected by the proposed addition of territory to the district.

(c) If the department determines that:

(1) the board has provided a petition that meets the requirements set forth in subsection (b); and

(2) the proposed addition of territory to the district is practical and feasible;

the department shall approve the board's proposed addition of territory to the district.

SECTION 18. IC 13-26-11-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) The board shall, by ordinance, establish just and equitable rates or charges for the use of and the service provided by a works. The rates or charges are payable by the owner of each lot, parcel of land, or building that:

(1) is connected with and uses a works; or

(2) in any way uses or is served by a works.

(b) Subject to sections 13(c) and 15 of this chapter, the board may periodically change and readjust the rates or charges as provided in this

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1 article.

2 SECTION 19. IC 13-26-11-13 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. (a) The
4 ordinance establishing the initial rates or charges, either as:

5 (1) originally introduced; or

6 (2) modified and amended;

7 shall be passed and put into effect after the hearing.

8 (b) A copy of the schedule of the rates and charges established must
9 be:

10 (1) kept on file in the office of the district; and

11 (2) open to public inspection.

12 **(c) This subsection applies to a regional sewage district.**
13 **Whenever the board acts under section 8(b) of this chapter to**
14 **change or readjust the rates and charges, the board shall mail,**
15 **either separately or along with a periodic billing statement, a**
16 **notice of the new rates and charges to each user affected by the**
17 **change or readjustment. If the change or readjustment increases**
18 **the rates and charges by the amount specified in section 15(c) of**
19 **this chapter, the notice required by this subsection:**

20 **(1) must include a statement of a freeholder's rights under**
21 **section 15 of this chapter; and**

22 **(2) shall be mailed within the time specified in section 15(c) of**
23 **this chapter.**

24 SECTION 20. IC 13-26-11-14 IS AMENDED TO READ AS
25 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. (a) The rates or
26 charges established for a class of users of property served shall be
27 extended to cover any additional premises served after the rates or
28 charges are established that are in the same class, without the necessity
29 of hearing or notice.

30 **(b) Subject to sections 13(c) and 15 of this chapter,** a change or
31 readjustment of the rates or charges may be made in the same manner
32 as the rates or charges were originally established.

33 SECTION 21. IC 13-26-11-15 IS AMENDED TO READ AS
34 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) A district
35 authority is established in each regional sewage district established
36 under this article.

37 **(b) The district authority of a regional sewage district consists of the**
38 **following:**

39 **(1) In the case of a regional sewage district located in one (1)**
40 **county:**

41 **(A) except as provided in clause (B), the county executive of**
42 **that county; or**

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(B) if the members of the county executive are trustees of the regional sewage district, the members of the county fiscal body.

(2) In the case of a regional sewage district located in more than one (1) county, one (1) county executive member, appointed by that member's county executive, from each county in which the district is located.

However, a person who serves on the board of trustees of a district may not be a member of the district authority.

(c) If a district adopts an ordinance increasing sewer rates and charges at a rate that is greater than five percent (5%) per year, as calculated from the rates and charges in effect from the date of the district's last rate increase before January 1, 2001, **the district shall mail a notice of the new rates and charges to each user of the sewer system who is affected by the increase, as required by section 13(c) of this chapter. The notice required by section 13(c) of this chapter:**

(1) shall be mailed not later than seven (7) days after the board adopts the ordinance increasing the rates and charges; and

(2) must include a statement of a freeholder's rights under this section.

(d) If subsection (c) applies, fifty (50) freeholders of the district or ten percent (10%) of the district's freeholders, whichever is fewer, may file a written petition objecting to the rates and charges of the district. A petition filed under this subsection must:

(1) contain the name and address of each petitioner;

(2) be filed with a member of the district authority, in the county where at least one (1) petitioner resides, not later than thirty (30) days after the district adopts the ordinance establishing the rates and charges; and

(3) set forth the grounds for the freeholders' objection.

(d) If a petition meeting the requirements of **this** subsection **(c)** is filed, the district authority shall investigate and conduct a public hearing on the petition. If more than one (1) petition concerning a particular increase in rates and charges is filed, the district authority shall consider the objections set forth in all the petitions at the same public hearing.

(e) The district authority shall set the matter for public hearing not less than ten (10) business days but not later than twenty (20) business days after the petition has been filed. The district authority shall send notice of the hearing by certified mail to the district and the petitioner and publish the notice of the hearing in a newspaper of general

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circulation in each county in the district.

(f) Upon the date fixed in the notice, the district authority shall hear the evidence produced and determine whether the increased sewer rates and charges established by the board by ordinance are just and equitable rates and charges, according to the standards set forth in section 9 of this chapter. The district authority, by a majority vote, shall:

- (1) sustain the ordinance establishing the rates and charges;
- (2) sustain the petition; or
- (3) make any other ruling appropriate in the matter.

(g) The order of the district authority may be appealed by the district or a petitioner to the circuit court of the county in which the district is located. The court shall try the appeal without a jury and shall determine one (1) or both of the following:

- (1) Whether the board of trustees of the district, in adopting the ordinance increasing sewer rates and charges, followed the procedure required by this chapter.
- (2) Whether the increased sewer rates and charges established by the board by ordinance are just and equitable rates and charges, according to the standards set forth in section 9 of this chapter.

Either party may appeal the circuit court's decision in the same manner that other civil cases may be appealed.

SECTION 22. [EFFECTIVE UPON PASSAGE] (a) The terms of the members of the Indiana recycling and energy development board are terminated on June 30, 2007.

(b) Before July 1, 2007, the governor shall appoint the members of the Indiana recycling market development board.

(c) This SECTION expires July 1, 2007.

SECTION 23. [EFFECTIVE JULY 1, 2007] (a) The environmental quality service council established under IC 13-13-7 shall study and make findings and recommendations concerning the following:

- (1) Shortening the environmental rulemaking process for rules adopted under IC 13 by considering the following:**
 - (A) Other state and local agency rulemaking processes.**
 - (B) Other state environmental rulemaking processes.**
 - (C) Negotiated rulemaking.**
 - (D) Steps and requirements of rulemaking.**
 - (E) Professional boards and the relationship between boards and the office of environmental adjudication.**

(2) The goals, funding, markets, and structure of recycling in Indiana.

(b) The environmental quality service council shall include its

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1 findings and recommendations developed under subsection (a) in
 2 the council's 2007 final report to the legislative council.
 3 (c) This SECTION expires January 1, 2008.
 4 SECTION 24. An emergency is declared for this act.

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COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill No. 154, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 8, delete lines 13 through 14, begin a new line block indented and insert:

"(2) The goals, funding, markets, and structure of recycling in Indiana."

and when so amended that said bill do pass.

(Reference is to SB 154 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 11, Nays 0.

 SENATE MOTION

Madam President: I move that Senator Tallian be added as coauthor of Engrossed Senate Bill 154.

GARD

 COMMITTEE REPORT

Mr. Speaker: Your Committee on Environmental Affairs, to which was referred Senate Bill 154, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 4-4-2.4-2, AS ADDED BY P.L.144-2006, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. The office of the lieutenant governor may adopt rules under IC 4-22-2 to carry out the duties, purposes, and functions of the office of the lieutenant governor relating to:

- (1) energy policy under section 1 of this chapter; **and**
- (2) the administration of the center for coal technology research

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under IC 4-4-30-5.5. and

~~(3) the Indiana recycling and energy development board under IC 4-23-5.5-6.5."~~

Page 5, between lines 16 and 17, begin a new paragraph and insert:
"SECTION 3. IC 4-23-5.5-1, AS AMENDED BY P.L.1-2006, SECTION 78, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. As used in this chapter:

(1) "board" ~~means refers to~~ the Indiana recycling and energy market development board created by this chapter; and

(2) "division" refers to the division of pollution prevention established by IC 13-27-2-1.

SECTION 4. IC 4-23-5.5-2, AS AMENDED BY P.L.1-2006, SECTION 79, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) The Indiana recycling and energy market development board is created and constitutes a public instrumentality of the state. The exercise by the board of the powers conferred by this chapter is an essential governmental function.

(b) The board consists of ~~thirteen (13)~~ **nine (9)** members, one (1) of whom shall be the lieutenant governor or the lieutenant governor's designee and ~~twelve (12)~~ **eight (8)** of whom shall be appointed by the governor for four (4) year terms. The governor's appointees shall be chosen from among representatives of:

(1) the coal industry;

~~(2) other regulated and nonregulated energy related industries;~~

~~(3) (2) Indiana universities and colleges with expertise in:~~

(A) recycling research and development; or

(B) energy research and development;

~~(4) agriculture;~~

~~(5) (3) labor;~~

~~(6) (4) industrial and commercial consumers of recycled feedstock;~~

~~(7) (5) environmental groups; and~~

~~(8) (6) private citizens with a special interest in~~

~~(A) recycling. or~~

~~(B) energy resources development.~~

No more than ~~six (6)~~ **four (4)** appointive members shall be of the same political party.

(c) A vacancy in the office of an appointive member, other than by expiration, shall be filled in like manner as the original appointment for the remainder of the term of that retiring member. Appointed members may be removed by the governor for cause.

(d) The board shall have seven (7) ex officio advisory members as

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follows:

- (1) The governor.
- (2) The director of the department of natural resources.
- (3) The commissioner of the department of environmental management.
- (4) Two (2) members from the house of representatives of opposite political parties appointed by the speaker of the house of representatives for two (2) year terms.
- (5) Two (2) members from the senate of opposite political parties appointed by the president pro tempore of the senate for two (2) year terms.

(e) The ~~office of the lieutenant governor~~ **division** shall serve as the staff of the board.

SECTION 5. IC 4-23-5.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) The governor shall appoint one (1) of the appointed members as chairman. ~~Seven (7)~~ **Five (5)** members of the board shall constitute a quorum and the affirmative vote of a majority of the membership shall be necessary for any action taken by the board. A vacancy in the membership of the board does not impair the right of the quorum to act.

(b) All the members of the board shall be reimbursed for their actual expenses incurred in the performance of their duties. The appointed members may also receive a per diem allowance as determined by the budget agency for attendance of board meetings and activities. All reimbursement for expenses shall be as provided by law.

SECTION 6. IC 4-23-5.5-4, AS AMENDED BY P.L.1-2006, SECTION 80, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. **A representative appointed by the division, in consultation with the** lieutenant governor or the lieutenant governor's designee, shall be the chief administrative officer for the board and shall direct and supervise the administrative affairs and technical activities of the board in accordance with rules, regulations, and policies established by the board. ~~The lieutenant governor or the lieutenant governor's designee~~ **division** may appoint the employees as the board may require and the agents or consultants as may be necessary for implementing this chapter. ~~The lieutenant governor or the lieutenant governor's designee~~ **division** shall prepare an annual administrative budget for review by the budget agency and the budget committee.

SECTION 7. IC 4-23-5.5-6, AS AMENDED BY P.L.1-2006, SECTION 81, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. (a) The board shall do the following:

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(1) Adopt procedures for the regulation of its affairs and the conduct of its business.

(2) Meet at the offices of the ~~lieutenant governor~~ **division** on call of:

(A) the lieutenant governor or the lieutenant governor's designee; **or**

(B) **the commissioner of the department of environmental management or the commissioner's designee;**

at least once each calendar quarter. The meetings shall be upon ten (10) days written notification, shall be open to the public, and shall have official minutes recorded for public scrutiny.

(3) Report annually in an electronic format under IC 5-14-6 to the legislative council the projects in which it has participated and is currently participating with a complete list of expenditures for those projects.

(4) Annually prepare an administrative budget for review by the budget agency and the budget committee.

(5) Keep proper records of accounts and make an annual report of its condition to the state board of accounts.

(b) The board may request that the lieutenant governor conduct assessments of the opportunities and constraints presented by all sources of energy. The board shall encourage the balanced use of all sources of energy with primary emphasis on:

(1) the utilization of Indiana's high sulphur coal; and

(2) the utilization of Indiana's agricultural and forest resources and products for the production of alcohol fuel.

However, the board shall seek to avoid possible undesirable consequences of total reliance on a single source of energy.

(c) (b) The board shall consider projects involving the creation of the following:

(1) Markets for products made from recycled materials.

(2) New products made from recycled materials.

(d) (c) The board may promote, fund, and encourage programs facilitating the development and ~~effective use of all sources of energy~~ **implementation of waste reduction, reuse, and recycling** in Indiana.

SECTION 8. IC 4-23-5.5-6.5, AS ADDED BY P.L.144-2006, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6.5. The ~~office of the lieutenant governor~~ **department of environmental management** may adopt rules under IC 4-22-2 to carry out the duties, purposes, and functions of this chapter.

SECTION 9. IC 4-23-5.5-7 IS AMENDED TO READ AS



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FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. The board, upon approval by the governor and the budget agency, may make the following expenditures:

(1) Matching grants to federal, state, and local governmental agencies for research and development of: ~~energy~~

(A) **recycling** resources projects; and

(B) recycling market development projects;
in Indiana.

(2) Matching grants to individuals, corporations, limited liability companies, partnerships, educational institutions, and other private sector groups for ~~energy~~ **recycling** resources and recycling market research and development.

(3) Direct grants, loans, or loan guarantees to those individuals and organizations specified in subdivision (1) or (2) of this section.

(4) Contractual services for ~~energy~~ **recycling** resources and recycling market research and development programs.

~~(5) Purchase or lease land for energy resources and recycling market research and development projects.~~

~~(6)~~ (5) Other projects and expenses consistent with this chapter.

SECTION 10. IC 4-23-5.5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. The board may:

(1) on behalf of the state, receive and accept grants, gifts, and contributions from public agencies, including the federal government, and from private agencies and private sources, including the Indiana business modernization and technology corporation, for the purpose of researching and developing ~~energy~~ **recycling** resources within the state, and may administer such, including contracting with other public and private organizations, to carry out the purposes for which such grants, gifts, and contributions were made;

(2) establish application forms and procedures for programs consistent with this chapter;

(3) accept applications from private and public sources for funding of programs consistent with this chapter;

(4) provide funding for studies, research projects, and other activities required to assess the nature and extent of recycling markets in Indiana and the nature and extent of ~~energy~~ **recycling** resources to meet the needs of the state; ~~including but not limited to coal and other fossil fuels, alcohol fuels produced from agricultural and forest products and resources, renewable, and other energy resources;~~

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- (5) deposit funds not currently needed to meet the obligations of the board with the treasurer of state to the credit of the fund, or invest in obligations as provided by IC 5-13-10.5; and
- (6) participate in or sponsor programs, conferences, or seminars aimed at assisting the state in promoting recycling market development. ~~and the effective use of all sources of energy in Indiana."~~

Page 8, between lines 1 and 2, begin a new paragraph and insert:

"SECTION 14. IC 13-20-13-8, AS AMENDED BY P.L.1-2006, SECTION 202, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. (a) Except as provided in subsection (d)(2), (d)(3), (d)(6), and (d)(7), the waste tire management fund is established for the following purposes:

- (1) **The department may use not more than** thirty-five percent (35%) of the money deposited in the fund each year ~~shall be used to assist the department for:~~

- (A) ~~in~~ the removal and disposal of waste tires from sites where the waste tires have been disposed of improperly; **and**

- (B) ~~in~~ operating the waste tire education program under section 15 of this chapter. ~~and~~

- (C) ~~to pay the expenses of administering the programs described in clause (B).~~

- (2) ~~Sixty-five percent (65%) of~~ **The department may use the remaining** money deposited in the fund each year ~~shall be used to: assist the lieutenant governor:~~

- (A) ~~in providing~~ **provide** grants and loans **under section 9(b) of this chapter** to ~~persons~~ **entities** involved in waste tire management activities; ~~under section 9 of this chapter;~~ and

- (B) ~~to~~ pay the expenses of administering the programs described in:

- (i) **subdivision (1)(B); and**

- (ii) clause (A).

- (b) The expenses of administering the fund shall be paid from money in the fund.

- (c) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

- (d) Sources of money for the fund are the following:

- (1) Fees paid under section 4(a)(6) of this chapter and IC 13-20-14-5(e).

- (2) Fees collected under section 7 of this chapter. All money deposited in the fund under this subdivision may be used by the department for waste reduction, recycling, removal, or

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remediation projects.

(3) Costs and damages recovered from a person **or other entity** under section 14 of this chapter or IC 13-20-14-8. All money deposited in the fund under this subdivision may be used by the department for removal and remediation projects.

(4) Fees established by the general assembly for the purposes of this chapter.

(5) Appropriations made by the general assembly.

(6) Gifts and donations intended for deposit in the fund. A gift or donation deposited in the fund under this subdivision may be specified to be entirely for the use of the department. ~~or the lieutenant governor.~~

(7) Civil penalties collected under IC 13-30-4 for violations of:

(A) this chapter;

(B) IC 13-20-14; and

(C) rules adopted under section 11 of this chapter and IC 13-20-14-6.

All money deposited in the fund under this subdivision may be used by the department for ~~waste tire removal and remediation~~ **eligible** projects.

SECTION 15. IC 13-20-13-9, AS AMENDED BY P.L.1-2006, SECTION 203, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. (a) The department may use money in the fund to assist the department in:

(1) removing waste tires from sites where waste tires have been disposed of improperly;

(2) properly managing waste tires;

(3) performing surveillance and enforcement activities used to implement proper waste tire management; and

(4) conducting the waste tire education program under section 15 of this chapter.

(b) The ~~lieutenant governor~~ **department** may use money in the fund to provide grants and loans to ~~persons~~ **entities** to establish and operate programs involving the following:

(1) Recycling or reuse of waste tires.

(2) Using waste tires as a source of fuel.

(3) Developing markets for waste tires and products containing recycled or reused waste tires.

(c) The ~~lieutenant governor~~ **department** may adopt rules under IC 4-22-2 necessary to implement this section.

SECTION 16. IC 13-26-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. A district may

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do the following:

- (1) Sue or be sued.
- (2) Make contracts in the exercise of the rights, powers, and duties conferred upon the district.
- (3) Adopt and alter a seal and use the seal by causing the seal to be impressed, affixed, reproduced, or otherwise used. However, the failure to affix a seal does not affect the validity of an instrument.
- (4) Adopt, amend, and repeal the following:
 - (A) Bylaws for the administration of the district's affairs.
 - (B) Rules and regulations for the following:
 - (i) The control of the administration and operation of the district's service and facilities.
 - (ii) The exercise of all of the district's rights of ownership.
- (5) Construct, acquire, lease, operate, or manage works and obtain rights, easements, licenses, money, contracts, accounts, liens, books, records, maps, or other property, whether real, personal, or mixed, of a person or an eligible entity.
- (6) Assume in whole or in part any liability or obligation of:
 - (A) a person;
 - (B) a nonprofit water, sewage, or solid waste project system; or
 - (C) an eligible entity;
 including a pledge of part or all of the net revenues of a works to the debt service on outstanding bonds of an entity in whole or in part in the district and including a right on the part of the district to indemnify and protect a contracting party from loss or liability by reason of the failure of the district to perform an agreement assumed by the district or to act or discharge an obligation.
- (7) Fix, alter, charge, and collect reasonable rates and other charges in the area served by the district's facilities to every person whose premises are, whether directly or indirectly, supplied with water or provided with sewage or solid waste services by the facilities for the purpose of providing for the following:
 - (A) The payment of the expenses of the district.
 - (B) The construction, acquisition, improvement, extension, repair, maintenance, and operation of the district's facilities and properties.
 - (C) The payment of principal or interest on the district's obligations.
 - (D) To fulfill the terms of agreements made with:

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- (i) the purchasers or holders of any obligations; or
- (ii) a person or an eligible entity.

(8) Except as provided in section 2.5 of this chapter, require connection to the district's sewer system of property producing sewage or similar waste, and require the discontinuance of use of privies, cesspools, septic tanks, and similar structures if:

(A) there is an available sanitary sewer within three hundred (300) feet of the property line; ~~and~~

(B) the district has given written notice by certified mail to the property owner at the address of the property at least ninety (90) days before a date for connection to be stated in the notice; ~~and~~

(C) if the property is located outside the district's territory, the district has:

(i) obtained; and

(ii) provided to the property owner;

a certification from the local health department that the connection is necessary to protect the public's health. The district shall provide the property owner the certification required by this clause along with the notice required by clause (B).

However, a district may not require the owner of a property described in this subdivision to connect to the district's sewer system if the property is already connected to a sewer system that has received all necessary permits from and approvals by the state, or any agency of the state, and has been determined to be functioning satisfactorily.

(9) Provide by ordinance for reasonable penalties for failure to connect and also apply to the circuit or superior court of the county in which the property is located for an order to force connection, with the cost of the action, including reasonable attorney's fees of the district, to be assessed by the court against the property owner in the action.

(10) Refuse the services of the district's facilities if the rates or other charges are not paid by the user.

(11) Control and supervise all property, works, easements, licenses, money, contracts, accounts, liens, books, records, maps, or other property rights and interests conveyed, delivered, transferred, or assigned to the district.

(12) Construct, acquire by purchase or otherwise, operate, lease, preserve, and maintain works considered necessary to accomplish the purposes of the district's establishment within or outside the

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district and enter into contracts for the operation of works owned, leased, or held by another entity, whether public or private.

(13) Hold, encumber, control, acquire by donation, purchase, or condemnation, construct, own, lease as lessee or lessor, use, and sell interests in real and personal property or franchises within or outside the district for:

- (A) the location or protection of works;
- (B) the relocation of buildings, structures, and improvements situated on land required by the district or for any other necessary purpose; or
- (C) obtaining or storing material to be used in constructing and maintaining the works.

(14) Upon consent of two-thirds (2/3) of the members of the board, merge or combine with another district into a single district on terms so that the surviving district:

- (A) is possessed of all rights, franchises, and authority of the constituent districts; and
- (B) is subject to all the liabilities, obligations, and duties of each of the constituent districts, with all rights of creditors of the constituent districts being preserved unimpaired.

(15) Provide by agreement with another eligible entity for the joint construction of works the district is authorized to construct if the construction is for the district's own benefit and that of the other entity. For this purpose the cooperating entities may jointly appropriate land either within or outside their respective borders if all subsequent proceedings, actions, powers, liabilities, rights, and duties are those set forth by statute.

(16) Enter into contracts with a person, an eligible entity, the state, or the United States to provide services to the contracting party for any of the following:

- (A) The distribution or purification of water.
- (B) The collection or treatment of sanitary sewage.
- (C) The collection, disposal, or recovery of solid waste.

(17) Make provision for, contract for, or sell the district's byproducts or waste.

(18) Exercise the power of eminent domain.

(19) Remove or change the location of a fence, building, railroad, canal, or other structure or improvement located within or outside the district. If:

- (A) it is not feasible or economical to move the building, structure, or improvement situated in or upon land acquired; and

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(B) the cost is determined by the board to be less than that of purchase or condemnation;

the district may acquire land and construct, acquire, or install buildings, structures, or improvements similar in purpose to be exchanged for the buildings, structures, or improvements under contracts entered into between the owner and the district.

(20) Employ consulting engineers, superintendents, managers, and other engineering, construction, and accounting experts, attorneys, bond counsel, employees, and agents that are necessary for the accomplishment of the district's purpose and fix their compensation.

(21) Procure insurance against loss to the district by reason of damages to the district's properties, works, or improvements resulting from fire, theft, accident, or other casualty or because of the liability of the district for damages to persons or property occurring in the operations of the district's works and improvements or the conduct of the district's activities.

(22) Exercise the powers of the district without obtaining the consent of other eligible entities. However, the district shall:

(A) restore or repair all public or private property damaged in carrying out the powers of the district and place the property in the property's original condition as nearly as practicable; or

(B) pay adequate compensation for the property.

(23) Dispose of, by public or private sale or lease, real or personal property determined by the board to be no longer necessary or needed for the operation or purposes of the district.

SECTION 17. IC 13-26-8-4 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:** **Sec. 4. (a) This section applies to the addition of territory to a district other than at the request of an eligible entity described in section 1 of this chapter.**

(b) To add territory to a district already established, the board must do the following:

(1) Adopt an ordinance establishing the boundaries of the additional territory to be included in the district.

(2) Obtain either of the following:

(A) The signed consent of more than fifty percent (50%) of the freeholders within the territory proposed to be added to the district.

(B) A certification from the local health department that the addition of the territory to the district is needed to protect the public's health.

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(3) Submit to the department a petition that includes the following:

(A) A description of the territory proposed to be added to the district.

(B) The signed consent or the certification obtained under subdivision (2).

(C) A certification that the board has mailed, either separately or along with a periodic billing statement, written notice of:

(i) the proposed addition to the district;

(ii) any potential effect that the proposed addition will have on the rates and charges for the use of and services provided by the district's works; and

(iii) a statement of a freeholder's rights under section 15 of this chapter, if the proposed addition of territory will potentially increase the rates and charges by the amount specified in section 15(c) of this chapter;

to each user of the works whose rates and charges will be potentially affected by the proposed addition of territory to the district.

(c) If the department determines that:

(1) the board has provided a petition that meets the requirements set forth in subsection (b); and

(2) the proposed addition of territory to the district is practical and feasible;

the department shall approve the board's proposed addition of territory to the district.

SECTION 18. IC 13-26-11-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) The board shall, by ordinance, establish just and equitable rates or charges for the use of and the service provided by a works. The rates or charges are payable by the owner of each lot, parcel of land, or building that:

(1) is connected with and uses a works; or

(2) in any way uses or is served by a works.

(b) Subject to sections 13(c) and 15 of this chapter, the board may periodically change and readjust the rates or charges as provided in this article.

SECTION 19. IC 13-26-11-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. (a) The ordinance establishing the initial rates or charges, either as:

(1) originally introduced; or

(2) modified and amended;

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shall be passed and put into effect after the hearing.

(b) A copy of the schedule of the rates and charges established must be:

- (1) kept on file in the office of the district; and
- (2) open to public inspection.

(c) This subsection applies to a regional sewage district. Whenever the board acts under section 8(b) of this chapter to change or readjust the rates and charges, the board shall mail, either separately or along with a periodic billing statement, a notice of the new rates and charges to each user affected by the change or readjustment. If the change or readjustment increases the rates and charges by the amount specified in section 15(c) of this chapter, the notice required by this subsection:

- (1) must include a statement of a freeholder's rights under section 15 of this chapter; and**
- (2) shall be mailed within the time specified in section 15(c) of this chapter.**

SECTION 20. IC 13-26-11-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. (a) The rates or charges established for a class of users of property served shall be extended to cover any additional premises served after the rates or charges are established that are in the same class, without the necessity of hearing or notice.

(b) **Subject to sections 13(c) and 15 of this chapter**, a change or readjustment of the rates or charges may be made in the same manner as the rates or charges were originally established.

SECTION 21. IC 13-26-11-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) A district authority is established in each regional sewage district established under this article.

(b) The district authority of a regional sewage district consists of the following:

- (1) In the case of a regional sewage district located in one (1) county:
 - (A) except as provided in clause (B), the county executive of that county; or
 - (B) if the members of the county executive are trustees of the regional sewage district, the members of the county fiscal body.
- (2) In the case of a regional sewage district located in more than one (1) county, one (1) county executive member, appointed by that member's county executive, from each county in which the

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district is located.

However, a person who serves on the board of trustees of a district may not be a member of the district authority.

(c) If a district adopts an ordinance increasing sewer rates and charges at a rate that is greater than five percent (5%) per year, as calculated from the rates and charges in effect from the date of the district's last rate increase before January 1, 2001, **the district shall mail a notice of the new rates and charges to each user of the sewer system who is affected by the increase, as required by section 13(c) of this chapter. The notice required by section 13(c) of this chapter:**

- (1) shall be mailed not later than seven (7) days after the board adopts the ordinance increasing the rates and charges; and**
- (2) must include a statement of a freeholder's rights under this section.**

(d) If subsection (c) applies, fifty (50) freeholders of the district or ten percent (10%) of the district's freeholders, whichever is fewer, may file a written petition objecting to the rates and charges of the district. A petition filed under this subsection must:

- (1) contain the name and address of each petitioner;
- (2) be filed with a member of the district authority, in the county where at least one (1) petitioner resides, not later than thirty (30) days after the district adopts the ordinance establishing the rates and charges; and
- (3) set forth the grounds for the freeholders' objection.

~~(d)~~ If a petition meeting the requirements of **this** subsection ~~(c)~~ is filed, the district authority shall investigate and conduct a public hearing on the petition. If more than one (1) petition concerning a particular increase in rates and charges is filed, the district authority shall consider the objections set forth in all the petitions at the same public hearing.

(e) The district authority shall set the matter for public hearing not less than ten (10) business days but not later than twenty (20) business days after the petition has been filed. The district authority shall send notice of the hearing by certified mail to the district and the petitioner and publish the notice of the hearing in a newspaper of general circulation in each county in the district.

(f) Upon the date fixed in the notice, the district authority shall hear the evidence produced and determine whether the increased sewer rates and charges established by the board by ordinance are just and equitable rates and charges, according to the standards set forth in section 9 of this chapter. The district authority, by a majority vote,

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shall:

- (1) sustain the ordinance establishing the rates and charges;
- (2) sustain the petition; or
- (3) make any other ruling appropriate in the matter.

(g) The order of the district authority may be appealed by the district or a petitioner to the circuit court of the county in which the district is located. The court shall try the appeal without a jury and shall determine one (1) or both of the following:

- (1) Whether the board of trustees of the district, in adopting the ordinance increasing sewer rates and charges, followed the procedure required by this chapter.
- (2) Whether the increased sewer rates and charges established by the board by ordinance are just and equitable rates and charges, according to the standards set forth in section 9 of this chapter.

Either party may appeal the circuit court's decision in the same manner that other civil cases may be appealed.

SECTION 22. [EFFECTIVE UPON PASSAGE] (a) The terms of the members of the Indiana recycling and energy development board are terminated on June 30, 2007.

(b) Before July 1, 2007, the governor shall appoint the members of the Indiana recycling market development board.

(c) This SECTION expires July 1, 2007."

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 154 as printed January 19, 2007.)

DVORAK, Chair

Committee Vote: yeas 10, nays 0.

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